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Paper No. 12

In re Application of HEATH, KEVIN R.
Appl. No.: 09/924,275
Filed: August 08, 2001
For: TUBULAR MEDICAL ENDOPROSTHESIS

**RESPONSE TO PETITION
UNDER 37 CFR 1.59**

This is a response to the petition under 37 CFR 1.59(b), filed December 19, 2002, to expunge information from the above identified application.

The decision on the petition will be held in abeyance until allowance of the application or mailing of an *Ex parte Quayle* action or a Notice of Abandonment, at which time the petition will be decided.

Petitioner requests that a document entitled Proprietary Material, filed December 19, 2002 (please note that the actual petition incorrectly references the delivery date as June 28, 2000), be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

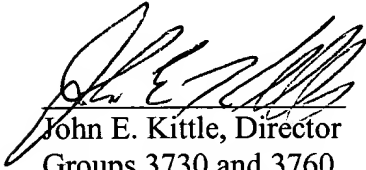
The decision on the petition is held in abeyance because prosecution on the merits is not closed. Accordingly, it is not appropriate to make a final determination of whether or not the material requested to be expunged is "material," with "materiality" being defined as any information which the examiner considers as being important to a determination of patentability of the claims. Thus, the decision on the petition to expunge must be held in abeyance at this time.

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During prosecution on the merits, the examiner will determine whether or not the identified document is considered to be "material." If the information is not considered by the examiner to be material, the information will be returned to applicant.

A handwritten signature in black ink, appearing to read "John E. Kittle", is written over a horizontal line.

John E. Kittle, Director
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